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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th May 2008

No. 5484-li/15-1/2008-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th April 2008 in Industrial Dispute Case No. 11 of 2002 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of M/s NICCO Corporation Limited, Cable Division, Baripada, Mayurbhanj/Security Consultant & Development Service, Kolkata and their workman Shri Purna Chandra Panigrahi was referred for adjudication is hereby published as in the Schedule below :—

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE MISC. CASE NO. 11 OF 2002

Dated the 10th April 2008

Present :

Shri Srikanta Nayak, o.s.j.s. (Sr. Branch)
Presiding Officer, Industrial Tribunal
Bhubaneswar.

Between :

Shri Purna Chandra Panigrahi, ... Complainant—Workman
Security Guard,
M/s NICCO Corporation Limited,
Baripada, Dist. Mayurbhanj.

And

1. M/s NICCO Corporation Limited, ... Opposite Parties—Management
Cable Division, represented through
its Managing Director, Baripada,
Dist. Mayurbhanj.

2. The Security Consultant & Deployment Service, represented by its Executive Director & Prop. Capt. Bharat Prakash, 18-Heysham Road, Kolkata-700020.

Appearances :

For the Complainant—Workman	. .	Shri N. K. Mohanty, Advocate.
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For the Opposite Parties—Management	. .	Shri S. K. Mishra, Advocate.
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AWARD

This Award arises out of a petition filed under Section 33-A of the Industrial Disputes Act by the above named complainant.

2. The case of the complainant (hereinafter referred to as the workman) is that he was an employee of M/s. NICCO Corporation Ltd., (hereinafter referred to as O. P. No. 1) and he joined as a Security Guard and his service was placed under the Security Consultant and Deployment Services (hereinafter referred to as O. P. No. 2). The Officer of O. P. No. 1 was supervising his work. He was the General Secretary of the Union and was a protected workman. He raised the industrial dispute regarding the pay structure of the employees which was registered as I. D. Case No. 43 of 2000. In order to pressurise him the management dismissed him from service without taking permission from the Tribunal as required under Section 33 (3) of the Act. So, alleging contravention of Section 33 of the Act, the complainant has preferred the present complaint.

3. The case of O.P. No. 1 is that the workman is not their employee and they had not appointed him nor dismissed him. He was the employee of O.P. No. 2 and his service was terminated by the said O.P. No. 2. The workman was not a protected workman nor he was recognised as such and the petition filed against the O.P. No. 1 is not maintainable.

4. The case of O.P. No. 2 is that on the application of the workman they appointed him as a Security Guard. The workman was never recognised as a protected workman. Since the workman committed misconduct by abusing and assaulting other workers, a proceeding was started against him. As he failed to participate in the enquiry he was set *ex parte* and the Enquiry Officer found him guilty of the charges. So, his service was terminated. As he was a concerned workman in Industrial Disputes Case No. 43 of 2000, his one month's wages was paid to him and a petition was filed before this Tribunal for approval of its action. The workman is not entitled to any relief.

5. On the aforesaid pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether the case is maintainable ?
- (ii) Whether the action of the management in dismissing the workman from service is legal and/or justified ?
- (iii) To what relief the workman is entitled to ?

6. The workman examined two witnesses in support of his case and the management examined two witnesses in support of its case.

7. *Issue No. 2*—In a proceeding under Section 33-A of the Act, the facts to be determined are (i) whether any Industrial Disputes Case was pending; (ii) whether a protected workman was dismissed without prior permission and (iii) whether the enquiry conducted was fair or not. In the decision reported in 1978 (II) LLJ (S.C.) Page-1 (M/s. Punjab Beverages Private Limited) Vrs. Suresh Chand), their Lordships held that “the first issue which is required to be decided in a complaint filed by the aggrieved workman under Section 33-A is (i) whether the order of discharge or dismissal made by the employer is in contravention of Section 33. If the contravention of Section 33 is established, the next question would be whether the order of discharge or dismissal passed by the employer is justified on merit. The Tribunal would have to go into this question and decide whether on merit the order of discharge or dismissal passed by the employer is justified and if it is, the Tribunal would sustain the order treating the breach of Section 33 as a mere technical breach”.

It is not disputed that Industrial Disputes Case No. 43 of 2000 was pending at the time of termination of service of the workman. W. W. Nos. 1 and M. W. No. 1 also admitted this fact. So, admittedly the workman was dismissed while Industrial Disputes Case No. 43 of 2000 was pending. In view of the specific plea of the O. P. No. 1 that the workman was not employed by them, it is to be first determined whether he was an employee of O. P. No. 1—M/s. NICCO Corporation Limited or of O. P. No. 2—Security Consultant and Deployment Service.

8. W. W. No. 1 deposed that he was an employee of O.P. No. 1 and working as a Security Guard and the ESI Corporation had issued identity card in his favour. Subsequently, he was placed under O.P. No. 2. The O. P. No. 1 was controlling, supervising and monitoring his services. He was a member of the Security Shramik Union and was functioning as its General Secretary and thus was treated as a protected workman. W. W. No. 2 also deposed that he joined with O.P. No. 1 in the year 1977 as a Security Guard and the Officers of O.P. No. 1 used to supervise their function. No document is filed to show that the workman was employed by O.P. No. 1. On the other hand, M. W. No. 2 deposed that the workman was not an employee of O.P. No. 1 but he was an employee of O. P. No. 2 and the O. P. No. 2 used to supervise his work and they only terminated his services. M. W. No. 1 also deposed that the workman was an employee of O. P. No. 2 and he was appointed by them. The evidence of the management's

witnesses receives ample corroboration from the documentary evidence. Ext. 7 is the letter issued by O.P. No. 2 to the workman asking him to explain about the misconduct within three days and Ext. 8 is the reply given by the workman. Ext. E is the letter given by the workman to O.P. No. 2 which shows that he received subsistence allowance from them. Ext. H is the application submitted by the workman to O.P. No. 2 for his appointment. All these documents show that the O. P. No. 2 appointed the workman and also took disciplinary action against him and this fact shows that the complainant was a workman under the O.P. No. 2 but not under the O.P. No. 1.

9. W. W. Nos. 1 and 2 deposed that the workman was a protected workman whereas the management's witnesses negatived the claim. As per Rules 68(1) and 68(2) of the Orissa Industrial Disputes Rules, the Union has to supply a list of office bearers, who are to be recognised as protected workmen and the management has to recognise them within fifteen days. In this case no list was submitted to the management. Exts. 4 and 4/1 reveal that the Union supplied the list of office bearers to the Deputy Registrar, Trade Union-cum-Deputy Labour Commissioner. Ext. 12 was also addressed to the Deputy Registrar furnishing the list of office bearers of the Union. So, no document is filed to show that at any point of time the Union submitted the list of office bearers to the management nor any document is filed to show that the management ever recognised that the complainant was a protected workman. So, there is no material to hold that the workman was a protected workman.

10. Admittedly, the workman was a concerned workman in Industrial Disputes Case No. 43 of 2000 when he was dismissed. M. W. No. 1 also deposed that a petition was filed for approval of its action and one month's wages was paid to the workman. This fact is not at all disputed. M. W. No. 1 deposed that on the 24th March 2002 the workman committed misconduct for which he was suspended and subsequently a charge sheet was served on him and he submitted his explanation denying the charges. His explanation was found unsatisfactory and one Krupasindhu Singh, Advocate was appointed as the Enquiry Officer. The Enquiry Officer served notice on the workman to attend the enquiry but the workman did not attend and the notice sent under registered post returned unserved with the endorsement that the addressee was absent. So, the notice was published in the newspaper. Even thereafter also the workman failed to attend the enquiry. So, the enquiry was conducted *ex parte* and the enquiry officer found that the charges were proved. The copy of the enquiry report was sent to the workman on the 19th July 2002. The workman submitted his explanation and ultimately his service was terminated by the disciplinary authority. This version of M. W. No. 1 receives ample support from the documents the genuineness of which are not disputed by the workman. W. W. No. 1 admitted in cross-examination that Ext. A is the charge sheet and Ext. B is his explanation. Ext. S is the notice which returned with the endorsement that the 'addressee long absent' (Ext. T) and Ext. U is the paper publication. So, the documents reveal that the enquiry officer followed the principles of natural justice and ample opportunities were provided to the workman but he failed to avail the same. Ext. Z is the enquiry report which reveals that the enquiry officer followed the principles of natural justice. So, the oral and documentary evidence reveal that the enquiry was a fair one. Moreover, the workman knew about the enquiry and he also submitted his show-cause. So, knowing about the enquiry he did not attend the

same. So, it will be deemed that he has waived his right. In the decision reported in 2008 (116) FLR (S.C.) Page-1171 (Board of Directors, H.P.T.C. Vrs. K. C. Rahi) their Lordships held that he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance of the principle of natural justice”.

11. It is contended that the criminal case which was instituted on the self-same ground on which the disciplinary proceeding was started ended in acquittal. So, the enquiry was not fair. This version of W. W. No. 1 receives support from Ext. 11, the judgement passed in G. R. Case No. 248 of 2002 which ended in acquittal. It is well-settled that the finding of the Criminal Court is not binding on the Tribunal nor the acquittal in a Criminal Case is sufficient to discharge an employee. In the decisuion reported in 2004 (103) FLR (S.C.) Page-273 (Management of Krishnakali Tea Estate Vrs. A.B.C.M. Sangha), their Lordships held that “Labour Court is not bound by the findings of the Criminal Court” and in the decision reported in 2003(97) FLR (Orissa) Page-1083 (Babaji Charan Das Vrs. Orissa Forest Development Corporation), their Lordships held that “merely because the delinquent is acquitted from the charges in Criminal Case, initiation of the departmental proceedings on the self-same charges is not a bar”.

12. *Issue Nos. (i) and (iii)* :—As already discussed, the enquiry conducted against the workman appears to be fair one and there was no breach of principles of natural justice. Ext. A, the charge sheet reveals that charge was framed as the workman abused the officials of the management, threatened and assaulted one Security Guard and Ext. Z reveals that the charges were proved. The charges levelled against the workman are of grave misconduct. So, awarding of major punishment on the workman does not appear to be illegal. As there was no breach of Section 33 of the Act and as the departmental enquiry is found to be fair one, the workman is not entitled to any relief in the present proceeding.

The Misc. Case is disposed of accordingly.

Dictated and corrected by me.

SRIKANTA NAYAK

10-4-2008

Presiding Officer

Industrial Tribunal, Bhubaneswar

SRIKANTA NAYAK

10-4-2008

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

P. MALLICK

Under-Secretary to Government